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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Communications Assistance for Law
Enforcement Act and Broadband Access and
Services

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ET Docket No. 04-295

RM-10865

**REPLY COMMENTS OF
Mercyhurst College**

Introduction and Summary

Mercyhurst College respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.¹ Mercyhurst College supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

We believe that the private networks operated by colleges, universities, and research institutions should continue to be exempt from CALEA. Applying CALEA to Mercyhurst's broadband network would impose significant costs that are not justified by past history. This unnecessary financial burden would impede our ability to deliver essential services to our students.

Discussion

1. Higher Education Networks Should Remain Exempt from CALEA.

¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) ("Order").

Broadband networks operated by higher education and research institutions are not subject to CALEA because the statute expressly exempts “equipment, facilities, or services that support the transport or switching of communications for private networks.” 47 U.S.C. § 1002(b)(2)(B). Although the Commission acknowledged in the *Order* that private educational networks are exempt from CALEA, it introduced ambiguity by stating: “To the extent . . . that [such] private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA” *Order* at ¶ 36, n.100. Mercyhurst College’s network is a private educational network for the use of our students, faculty, and staff.

The Commission should clarify that only commercial entities are covered by the language in footnote 100, in light of the clear statutory exemption of private network operators. Alternatively, the Commission should invoke its discretionary authority under Section 102(8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with the forthcoming assistance-capability requirements. Such an exemption is necessary to remain faithful to congressional intent and to avoid imposing unnecessary burdens on colleges, universities, and research institutions.

Contrary to the suggestion by the Department of Justice that “no exemptions are appropriate based on the current record,” DOJ Comments at 11, the Higher Education Coalition has defined a narrow class of private network operators that should be exempt from CALEA for all the reasons contained in the Coalition’s comments and in these reply comments. The absence of existing compliance standards does not argue for postponing exemption determinations, but instead makes a prompt exemption more critical. Because the Commission has established an 18-month compliance deadline, Mercyhurst College must begin planning *now* to set aside funds

for possible CALEA compliance. Far from being premature, an exemption for higher education and research institutions is urgently necessary.

2. Low Incidence of Surveillance Requests in Higher Education Networks

Mercyhurst College has never received a surveillance request from a law enforcement agency. If a lawful request were to be received, we would comply fully and quickly. Imposing burdensome new assistance-capability requirements under CALEA is not necessary to serve the interests of law enforcement.

3. A Broad Application of CALEA Would Impose Significant Burdens on Mercyhurst College and Divert Funds from Its Critical Educational Mission.

As noted above, Mercyhurst College believes that CALEA does not apply to it under the plain terms of the statute and under the most reasonable reading of the *Order*. If the Commission were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such as Mercyhurst's must comply with some or all assistance capability requirements, such a ruling would impose significant and unwarranted burdens. Costs would include:

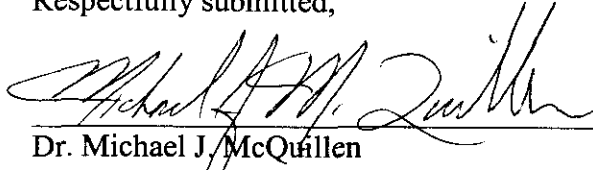
- Replacement of network switches and routers
- Network redesign
- Hiring of network security personnel

If the FCC were to apply CALEA broadly to higher education networks — contrary to the text of the statute — such a ruling would impose significant burdens that far outweigh its putative benefits. The Commission accordingly should exempt higher education institutions and research networks from CALEA, if it considers them subject to the assistance-capability requirements in the first place.

Conclusion

Mercyhurst College respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA.

Respectfully submitted,



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December 12, 2005